

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Cassandra Fendley	Team: Squad #5	CCRB Case #: 201404275	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Thursday, 05/01/2014 11:00 PM	Location of Incident: § 87(2)(b)	Precinct: 101	18 Mo. SOL 11/1/2015	EO SOL 11/1/2015	
Date/Time CV Reported Fri, 05/02/2014 4:30 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Fri, 05/02/2014 4:30 PM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POM Neil Cusick	03048	948839	101 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Sean Gaynor	20449	951766	101 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Neil Cusick	Discourtesy: PO Neil Cusick spoke rudely to § 87(2)(b)	§ 87(2)(b)
B.POM Neil Cusick	Abuse: PO Neil Cusick frisked § 87(2)(b)	§ 87(2)(b)
C.POM Neil Cusick	Abuse: PO Neil Cusick searched § 87(2)(b)	§ 87(2)(b)

Case Summary

On May 1, 2014, at approximately 11:00 p.m., § 87(2)(b)'s vehicle was pulled over by PO Neil Cusick and PO Sean Gaynor, both of the 101st Precinct, for driving without his headlights and for illegal window tints. § 87(2)(b) pulled his vehicle over just in front of his residence, at § 87(2)(b) in Queens, and immediately exited his vehicle. It was alleged that PO Cusick told § 87(2)(b) to get the “fuck” back into his vehicle, but he refused to do so (**Allegation A**). It was also alleged that PO Cusick frisked § 87(2)(b) handcuffed him and searched his vest pockets (**Allegations B and C**). § 87(2)(b) screamed for his mother, who exited their residence, and it was alleged that PO Cusick asked who the “hell” she was and told him not to “fucking” move (**subsumed in Allegation A**). § 87(2)(b) was released with two summonses, § 87(2)(b).

Mediation and Criminal Histories

§ 87(2)(b) PO Cusick and PO Gaynor all accepted to mediate this complaint. However, during the mediation, § 87(2)(b) decided that he wanted his complaint investigated instead. § 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

§ 87(2)(b) had not filed a notice of claim with the City of New York, with regard to the incident, as of October 30, 2014, which is two months past the 90-day filing expiration (encl. 7 AH). § 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Civilian and Officer CCRB Histories

- PO Cusick has been a member of the service for four years and this is the first complaint against him (encl. 1 A).
- This is § 87(2)(b)'s first CCRB complaint (encl. 1 B).

Investigative Findings and Recommendations

Allegations Not Pleaded

§ 87(2)(g)

Allegation A – Discourtesy: PO Neil Cusick spoke rudely to § 87(2)(b)

§ 87(2)(b) alleged that when he got out of his vehicle after he was stopped by the officers, PO Cusick immediately told him to get the “fuck” back into his vehicle. § 87(2)(b) said that after his mother exited their residence and he was already handcuffed, he was moving around. § 87(2)(b) alleged that PO Cusick asked who the “hell” § 87(2)(b)'s mother was and told § 87(2)(b) not to “fucking” move (encl. 3 B-G). § 87(2)(b) said that when § 87(2)(b) was moving around while he was handcuffed, PO Cusick told him to stay the “fuck” still. She did not hear PO Cusick use any other profanity (encl. 3 J-M). § 87(2)(g) § 87(2)(b) a neighbor who witnessed the incident from his § 87(2)(b) floor balcony about thirty yards away from the incident location, did not recall hearing officers using any profanity besides telling § 87(2)(b) to “shut up” (encl. 3 A). Further, both PO Cusick (encl. 4 A-G) and PO Gaynor (encl. 4 H-N) said that neither of them used any profanity throughout the incident. They did, however, give multiple

commands for § 87(2)(b) to get back into his vehicle and for him to stop walking towards them.

§ 87(2)(g)
[REDACTED]
[REDACTED].

Allegation B – Abuse of Authority: PO Neil Cusick frisked § 87(2)(b)

Allegation C – Abuse of Authority: PO Neil Cusick searched § 87(2)(b)

§ 87(2)(b) said that PO Cusick told him to get back into his vehicle about two times, but he did not comply. PO Cusick then patted down § 87(2)(b)'s front and back pants pockets and up the sides of his body where his vest pockets were located. PO Cusick then searched § 87(2)(b)'s front vest pockets, without his consent, and pulled out a box cutter. § 87(2)(b) explained that he used it for work. § 87(2)(b) said that he yelled for his mother to come outside. § 87(2)(b) who witnessed the incident after she heard § 87(2)(b) screaming for her, did not see PO Cusick frisk or search § 87(2)(b). However, she said that § 87(2)(b)'s box cutter had already been removed from his pocket by the time she exited her house. Over the telephone, § 87(2)(b) a neighbor from across the street who witnessed the incident from the second floor terrace of his house, said that he saw PO Cusick pat down § 87(2)(b)'s front and back pockets and also search inside of § 87(2)(b)'s front and back pockets, placing items on the hood of § 87(2)(b)'s vehicle. After the incident concluded, § 87(2)(b) went downstairs and provided his contact information to § 87(2)(b) in order to be a witness to the incident if needed. However, § 87(2)(b) missed his scheduled appointments and never provided an official statement to the CCRB.

PO Cusick said that he did pull § 87(2)(b)'s box cutter out of his vest pocket, but that he had consent to do so. PO Cusick did not recall searching § 87(2)(b) besides that one pocket and did not recall frisking § 87(2)(b). PO § 87(2)(b) did say that he feared for his safety because § 87(2)(b) would not comply with orders to get back into his car and to stop walking away towards his house when he was asked not to. However, when asked about where exactly § 87(2)(b) walked, PO Cusick said that he only walked five feet towards the officers and a few steps closer towards his own vehicle. PO Cusick also feared for his safety because § 87(2)(b) had not pulled his vehicle over right away at the beginning of the car stop, but instead pulled over about halfway down § 87(2)(b), which is a dark area. PO Cusick did not remember if § 87(2)(b) was doing anything with his hands and did not see any bulges on § 87(2)(b). PO Gaynor said that § 87(2)(b) voluntarily provided the information that he had a box cutter in his pocket and that he gave PO Cusick permission to remove it. PO Gaynor said that PO Cusick did not enter any other pockets and did not frisk § 87(2)(b) at all. PO Gaynor added that he feared for his safety because § 87(2)(b) was not cooperative, it was a dark, high-crime area and he was uncomfortable with § 87(2)(b) continued walking towards the officers when asked not to do so.

§ 87(2)(g)
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

§ 87(2)(g) [Redacted]
[Redacted]
§ 87(2)(g) [Redacted]
[Redacted]
[Redacted].

Pod: 5

Investigator: _____
Signature Print Date

Supervisor: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date